

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW MEXICO**

**RANDY MONTOYA,  
Plaintiff,**

**v.**

**Case No.**

**PENSKE TRUCK LEASING CO., LP;  
JOE HILL; and MIKE MARTINEZ,**

**Defendants.**

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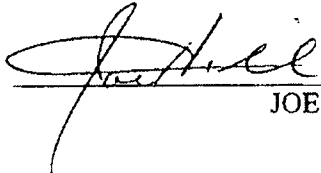
**DECLARATION OF JOE HILL IN SUPPORT OF NOTICE OF REMOVAL**

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I, JOE HILL, declare as follows:

1. I am executing this declaration in support of defendants' notice of removal. I have personal knowledge of the facts stated in this declaration and could competently testify to the same if called upon to do so.
2. I am employed by Penske as the Vice President, Mountain Area. I became familiar with plaintiff Randy Montoya during his employment with Penske.
3. Montoya was an at-will employee of Penske. Attached hereto as **Exhibit 1** is a true and correct copy of Montoya's signed employment application.
4. Attached hereto as **Exhibit 2** is a true and correct copy of a portion of Penske's "Policies and Procedures Manual" dated 09/22/08.
5. Based on my experience as Mountain Area Vice President, Penske maintains personnel files relative to its employees, and we maintained such a file relative to Mr. Montoya. That file contained information such as his application, Employment Eligibility Verification forms, Medical Examination Reports, Department of Transportation documents, and other records.
6. Penske created, maintained, and possessed Mr. Montoya's personnel file and the records generated for that file belong to Penske. The personnel file did not belong to Mr. Montoya, but to Penske.
7. At the time he was laid off, Plaintiff was earning a base salary of approximately \$55,000 per year. He also earned commissions. In 2008, his first year of employment, he earned nearly \$14, 000.00 in commissions.

I declare under the penalty of perjury under the laws of the United States that the foregoing is true and correct and that this declaration was executed this 18th day of March, 2010, at Tempe, Arizona.

  
JOE HILL

# **EXHIBIT 1**

**PENSKE**

# Employment Application

An Equal Opportunity Employer

It is the policy of Penske to employ, train, compensate, promote and provide other terms and conditions of employment, without regard to a person's race, color, religion, national origin, sex, sexual orientation, age, disability (including pregnancy), veteran status, or other characteristics protected by law. This application must be completed in full. Please print or type. Answer every question.

## 1. EMPLOYMENT ELIGIBILITY

The Immigration Reform and Control Act of 1986 prohibits the employment of unauthorized aliens, and requires employers to verify the employment eligibility of all new associates. An offer of employment made by the Company will be conditioned upon your providing the documentation required by law as evidence of your personal identity and your authorization to work in the United States. Any offer of employment is also conditioned upon the successful completion of a background investigation, a post-offer physical evaluation (if applicable) and a drug screening.

## 2. PERSONAL DATA

Name: Montoya Randolph Date of application: 11/6/07  
Last First Middle

Previous/different last name(s), including birth name.

P:  
S:  
C:  
E:  
T:

REDACTED

Indicate your country of origin, birth date (check one of the following):

☒ A citizen or national of the United States

☐ A lawful permanent resident (Alien # A \_\_\_\_\_)

☐ An alien authorized to work in the U.S. (Alien # or Admission # \_\_\_\_\_)

## 3. JOB INTEREST

What position are you applying for? Lease Sales Date available for employment: \_\_\_\_\_

How or by whom were you referred to us? Sanderson Employment

List any relatives currently working for Penske: \_\_\_\_\_

Please indicate your driver's license number. Your driver's license record will be reviewed as part of the hiring process. If you are applying for a position that requires you to operate a commercial vehicle, please provide a copy of your driver's license to the company.

REDACTED

## 4. EDUCATION AND TRAINING

List only those educational institutions where you attended classes (physically or online). Do not include those institutions where your degree was acquired by fulfilling only life experience requirements and/or paying a one-time flat fee.

Full School Name	City	State	Major Course or Subject	Did you Graduate	If No, Est. Grad Date	Degree
Belen High School	Belen	NM		Yes <input checked="" type="checkbox"/>		
Trade School/Technical School				No <input type="checkbox"/>		
				Yes <input type="checkbox"/>		
				No <input type="checkbox"/>		
Academy of Art College	Belen	NM	Industrial Education	Yes <input checked="" type="checkbox"/>		BA MA
Graduate School				No <input type="checkbox"/>		
				Yes <input type="checkbox"/>		
				No <input type="checkbox"/>		
General Contractor	Belen	NM	GB 98	Yes <input type="checkbox"/>		
Other Education				No <input type="checkbox"/>		
				Yes <input type="checkbox"/>		
				No <input type="checkbox"/>		

Please indicate name(s) used during highest level of education: Randolph Montoya

**5. PRIVACY POLICY**

At Penske, we are committed to protecting your privacy. Your personal information will be maintained in an electronic database in the U.S. and will be processed by a third-party provider for purposes of conducting background investigations. Your personal information will be used by Penske for recruitment, Penske human resources processes and background checking purposes. The electronic database has security measures in place to protect the loss, misuse, unauthorized access or disclosure, alteration or destruction of the information under our control. By submitting your personal information and signing this application, you agree that Penske may process it for recruitment, human resources processes and background checking purposes.

**6. PRIOR ADDRESS INFORMATION**

*Please indicate all addresses - other than the current address indicated on page 1 - that you have used in the past seven (7) years.*

Street Address: NA

City: \_\_\_\_\_ State/Province: \_\_\_\_\_ ZIP/Postal Code: \_\_\_\_\_

Country: \_\_\_\_\_ Dates at this address: From: \_\_\_\_\_ To: \_\_\_\_\_

Street Address: \_\_\_\_\_

City: \_\_\_\_\_ State/Province: \_\_\_\_\_ ZIP/Postal Code: \_\_\_\_\_

Country: \_\_\_\_\_ Dates at this address: From: \_\_\_\_\_ To: \_\_\_\_\_

Street Address: \_\_\_\_\_

City: \_\_\_\_\_ State/Province: \_\_\_\_\_ ZIP/Postal Code: \_\_\_\_\_

Country: \_\_\_\_\_ Dates at this address: From: \_\_\_\_\_ To: \_\_\_\_\_

Street Address: \_\_\_\_\_

City: \_\_\_\_\_ State/Province: \_\_\_\_\_ ZIP/Postal Code: \_\_\_\_\_

Country: \_\_\_\_\_ Dates at this address: From: \_\_\_\_\_ To: \_\_\_\_\_

Street Address: \_\_\_\_\_

City: \_\_\_\_\_ State/Province: \_\_\_\_\_ ZIP/Postal Code: \_\_\_\_\_

Country: \_\_\_\_\_ Dates at this address: From: \_\_\_\_\_ To: \_\_\_\_\_

**7. EMPLOYMENT**

Were you ever employed by Penske or a Penske affiliated business? ☐ Yes ☒ No

Start date: \_\_\_\_\_ End date: \_\_\_\_\_

Are you currently subject to a non-compete or employment agreement?

Starting with your current or most recent employment, list all previous employers. Include self-employment, military service, summer and part-time jobs for at least the last seven (7) years. Writing "see resume" is not acceptable. Attach additional sheets if necessary.



## 6. CURRENT/PREVIOUS EMPLOYER

If applying for a position regulated by the Department of Transportation (DOT), i.e., CDL Licensed Occupational Driver, skip to Section 9 AND complete the separate application. Please use complete names-no abbreviations. If self-employed, please indicate name of business entity.

Company Name: Snap-on Equipment Start Date: 06/03 End Date: Current Job Title and Duties: Equipment Sales Specialist  
 Street Address: 309 Exchange Ave Department: Technical Automotive Group Commission  
 City: Conway AK State: AK Telephone Number: 800 Snap Tool  
 When may we contact this employer? ☐ Now ☒ After acceptance of offer  
 Reason For Leaving: Still employed Name and Title of Mgr. or Commanding Officer: Dean Karis DSS

Company Name: The Handymen Extraordinary Start Date: 8/99 End Date: CURRENT Job Title and Duties: Self General Contractor Employer  
 Street Address: 86 Lopez Rd Department: Salary:  
 City: Belen State: NM Telephone Number: 505 550-5196  
 When may we contact this employer? ☒ Now ☐ After acceptance of offer  
 Reason For Leaving: Still own the Company I am not active Name and Title of Mgr. or Commanding Officer: Self

Company Name: SMS Consulting Start Date: 8/98 End Date: 8/2000 Job Title and Duties: Self employed Consultant  
 Street Address: 86 Lopez Rd Department: Salary:  
 City: Belen State: NM Telephone Number: (505) 550-5196  
 When may we contact this employer? ☒ Now ☐ After acceptance of offer  
 Reason For Leaving: Started a Construction Company Self Name and Title of Mgr. or Commanding Officer: Self

Company Name: Environmental Sys. Prod. Start Date: 4/97 End Date: 8/99 Job Title and Duties: District Sales Mgr.  
 Street Address: Department: Sales Salary: Commission  
 City: East Granby State: CT Telephone Number: ( )  
 When may we contact this employer? ☐ Now ☒ After acceptance of offer  
 Reason For Leaving: Did not want to transfer to Canada Name and Title of Mgr. or Commanding Officer: Dick Luther

Company Name: SPK Allen Test Products Start Date: 6/85 End Date: 10/98 Job Title and Duties: District Sales Mgr.  
 Street Address: 8001 Angling Rd. Department: Automotive Diagnostics Commission  
 City: Kalamazoo State: MI Telephone Number: ( )  
 When may we contact this employer? ☒ Now ☐ After acceptance of offer  
 Reason For Leaving: Corp Reorganization Pos Eliminated Name and Title of Mgr. or Commanding Officer: Ken Reeves

**9. CONVICTIONS/SUSPENSIONS/DEBARMENTS**

Have you ever been convicted of a felony? Include all pleas of "guilty" or "no contest."

☐ Yes ☒ No

If you answered "Yes" to the above question, please indicate the county and state.

County \_\_\_\_\_ State \_\_\_\_\_

Have you been convicted of or imprisoned for any type of misdemeanor within the past seven (7) years?

☐ Yes ☒ No

**MA** - include only convictions and completed periods of incarceration within the last five (5) years and exclude first offense for drunkenness, simple assault, speeding, a minor traffic violation, an affray or disturbing the peace.

**NV** - include only convictions within the past seven (7) years for misdemeanors which resulted in imprisonment.

**WA** - consider conviction or release from imprisonment, whichever is more recent, within past seven years.

**CA** - exclude information regarding (1) convictions of marijuana offenses in violation of CA Health and Safety Code Sections 11357 (b) or (c) or a statutory predecessor thereof, 11360(c) [now (b)], 11364, 11365, or 11550, as they related to marijuana prior to January 1, 1976, or a statutory predecessor thereof, which are more than two years old; (2) any misdemeanor conviction for which probation has been successfully completed or otherwise discharged and the case has been judicially dismissed pursuant to California Penal Code Section 1203.4; and (3) detentions that did not result in convictions.

**Hawaii** - Do not answer either of the above two questions.

In **AK, CA, CO, DE, IL, MD, MA, OH, OK, OR, RI, UT** and **VA** you need not disclose information pertaining to sealed or expunged conviction records.

In **CT** you need not disclose arrests, criminal charges or convictions for which records have been erased pursuant to Conn. Gen. Stat. 46b-146, 54-76a or 54-142a. These records pertain to findings of delinquency; findings that a child was a member of a family with service needs; adjudications as a youthful offender; dismissed or annulled criminal charges; criminal charges for which they have been found not guilty; or convictions for which they received absolute pardons. Applicants whose criminal records have been so erased are deemed never to have been arrested and may so swear.

Are you currently debarred, suspended or otherwise ineligible to work on any federally funded program?

☐ Yes ☒ No

If you answered "Yes" to any of the above questions, please explain fully. This information will not necessarily bar an individual from employment and, therefore, any uncertainty should be communicated to Penske. The nature and seriousness of the crime and date of conviction will be considered.

**10. IN MARYLAND AND MASSACHUSETTS**

UNDER MARYLAND LAW, AN EMPLOYER MAY NOT REQUIRE OR DEMAND, AS A CONDITION OF EMPLOYMENT, PROSPECTIVE EMPLOYMENT, OR CONTINUED EMPLOYMENT, THAT AN INDIVIDUAL SUBMIT TO OR TAKE A LIE DETECTOR OR SIMILAR TEST. AN EMPLOYER WHO VIOLATES THIS LAW IS GUILTY OF A MISDEMEANOR AND SUBJECT TO A FINE NOT EXCEEDING \$100.

IT IS UNLAWFUL IN MASSACHUSETTS TO REQUIRE OR ADMINISTER A LIE DETECTOR TEST AS A CONDITION OF EMPLOYMENT OR CONTINUED EMPLOYMENT. AN EMPLOYER WHO VIOLATES THIS LAW SHALL BE SUBJECT TO CRIMINAL PENALTIES AND CIVIL LIABILITY. AN APPLICANT FOR EMPLOYMENT WITH A SEALED RECORD ON FILE WITH THE COMMISSIONER OF PROBATION MAY ANSWER "NO RECORD" WITH RESPECT TO AN INQUIRY HEREIN RELATIVE TO PRIOR ARRESTS, CRIMINAL COURT APPEARANCES OR CONVICTIONS. IN ADDITION, ANY APPLICANT FOR EMPLOYMENT MAY ANSWER "NO RECORD" WITH RESPECT TO ANY INQUIRY RELATIVE TO PRIOR ARRESTS, COURT APPEARANCE AND ADJUDICATIONS IN ALL CASES OF DELINQUENCY OR AS A CHILD IN NEED OF SERVICES WHICH DID NOT RESULT IN A COMPLAINT TRANSFERRED TO THE SUPERIOR COURT FOR CRIMINAL PROSECUTION.

Acknowledgement: \_\_\_\_\_

**11. ADDITIONAL INFORMATION**

State any additional information you feel may be helpful to us in considering your application. This could include any specialized training or courses you have completed that will aid in evaluating your qualifications for the position you are seeking. (Example: If applying for a clerical position, note training such as word processing, typing, calculator, computer, hardware, software, etc.) Please include grade or other indicator of achievement, such as words-per-minute typed. You should feel free to attach a resume.

**12. REFERENCES**

Please list at least three (3) business- or school-related references that Penske and Penske's affiliated businesses may contact regarding your application. Do not include relatives.

Reference Name

Address

Daytime Phone Number

1. Mitch Black

(206) 245-8960

Mitch Provide - later time

(206) 112-5111

**13. COMMITMENT TO INTEGRITY**

Penske's commitment to integrity is an integral part of our success. As such, all associates must acknowledge in writing their commitment to adhering to Penske's policies and reporting concerns about possible violations.

**14. RELEASE AND ACKNOWLEDGEMENT**

I understand that Penske (hereinafter referred to as the Company) requires certain information about me to evaluate my qualifications for employment and to conduct its business if I become an associate. Therefore, I authorize the Company to make such investigations and inquiries of my personal employment, financial or medical history and other related matters as may be necessary in arriving at an employment decision including, but not limited to, hiring and retention decisions. Generally, inquiries regarding medical history will be made only if and after a conditional offer of employment has been extended. I agree to cooperate in such investigations and release those parties supplying such information to the Company from all liability or responsibility with respect to information supplied.

I agree that the Company may use the information it obtains concerning me in the conduct of its business. I understand that such use may include disclosure outside the Company in those cases where its agents and contractors need such information to perform their functions, where their company's legal interests and/or obligations are involved, or where there is a medical emergency involving me. I understand, however that the Company intends to protect the confidentiality of personal information it obtains concerning me to the extent required by law.

I agree that I will not disclose or use while interviewing with or employed with Penske any confidential or proprietary information of others, including any former employer.

I understand that my employment is at-will. I further understand that my employment status may not be modified or changed except in writing and signed by a duly authorized officer of the Company.

I understand that any false or misleading answers or statements made by me on the application and any supplement thereto during any interview(s) or in connection with the above-mentioned investigations may be grounds for refusal of employment, invalidate my employment or, if employed, will be sufficient grounds for immediate discharge and render me ineligible for any Company benefits.

I understand that information I provide regarding current and/or previous employers may be used, and those employer(s) will be contacted for the purpose of investigating my safety performance history as required by 49 CFR § 391.23 (d) and (e). I understand that I have the right to:

- review information provided by previous employers.
- have errors in the information corrected by previous employers and for those previous employers to re-send the corrected information to the prospective employer, and
- have a rebuttal statement attached to the alleged erroneous information, if the previous employer(s) and I cannot agree on the accuracy of the information.

My signature below acknowledges that I have read, understand and agree to the terms of the entire application.

Signature: *Randolph Montoya* Date: \_\_\_\_\_

Name: (please print) Randolph Montoya

TO BE SEPARATED BY CORPORATE HUMAN RESOURCES ONLY

**15. SELF IDENTIFICATION**

We request that you provide the following information on a voluntary basis. This information is requested for statistical purposes only, and **will not be kept with your application** or used in connection with any employment decisions. There will be no negative consequences to you if you choose not to provide this information.

SEX: ☐ Male ☐ Female

**RACE/ETHNICITY:**

- ☐ American Indian or Alaskan Native - A person with origins in any of the original peoples of North America who maintains cultural identification through tribal affiliation or community recognition.
- ☐ Asian or Pacific Islander - A person with origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands. This area includes China, Japan, Korea, the Philippine Republic and Samoa; and on the Indian Subcontinent, India, Pakistan, Bangladesh, Sri Lanka, Nepal, Sillim and Bhutan.
- ☐ Black - An individual, not of Hispanic origin, with origins in any of the Black racial groups of Africa.
- ☐ Hispanic - A person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race. This does not include persons of Portuguese decent or persons from Central or South America who are not of Spanish origin or culture.
- ☐ White - An individual, not of Hispanic origin, with origins in any of the original peoples of Europe, North Africa, or the Middle East.

Name: (please print) \_\_\_\_\_ Signature: \_\_\_\_\_ Date: \_\_\_\_\_



# **EXHIBIT 2**

## Introduction to Penske Policies and Procedures Manual

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09/22/08

The Policies and Procedures Manual ("Manual") is intended for the use of all associates of Penske Truck Leasing Co., L.P. and Penske Logistics, LLC ("Penske.") It provides basic information that is necessary for you to become familiar with many of the Penske standards, guidelines, policies, practices, procedures and benefits. This, in turn, enables Penske to provide for the fair treatment of all associates.

Nothing contained in this Manual is intended to create, or is to be considered as creating, any type of contract, or to create legally enforceable obligations on behalf of Penske or its associates. Specifically with respect to associate benefits, descriptions of various benefits contained in this Manual (such as group insurance benefit, for example) are summaries only. This Manual is not intended to be, and it shall not be, considered either a summary plan description or a plan document, as those terms are defined by the Employee Retirement Income Security Act ("ERISA"), as amended. If any description in this Manual differs from a formal agreement, summary plan description, or plan document, the language of the formal agreement, summary plan description, or plan document will control.

Because business and economic conditions are always changing, Penske reserves full discretion to modify, revoke, suspend, terminate, or delete any or all statements, standards, guidelines, policies, practices, procedures, and benefits contained in this Manual, in whole or in part, at any time, with or without notice.

Since 2007, changes have been made to existing policies, and several new policies and procedures have been added, enabling Penske to more effectively and efficiently manage its business. Note that if there is a conflict between the standards, guidelines, policies, practices, procedures, and benefits described in this Manual and a current Collective Bargaining Agreement in effect for represented associates, the terms of the Collective Bargaining Agreement have precedence. Where the Collective Bargaining Agreement does not address terms described in this Manual, then the provisions of the Manual apply.